

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FRANK RIVERA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-235
	)	
PENNSYLVANIA DEPARTMENT OF	)	Judge McVerry
CORRECTIONS, <i>et al.</i> ,	)	Magistrate Judge Bissoon
	)	
Defendants.	)	

**MEMORANDUM ORDER**

Plaintiff Frank Rivera (“Plaintiff”) presently is incarcerated at the State Correctional Institution at Greene (“SCI-Greene”), located in Waynesburg, Pennsylvania. This lawsuit, which was brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, commenced with the receipt of the complaint by this Court on February 18, 2010. (Doc. 1). Plaintiff was granted leave to proceed *in forma pauperis* (“IFP”) on February 19, 2010. (Doc. 2). In his complaint, Plaintiff alleges multiple deprivations of his rights under the United States Constitution by a litany of Defendants. See (Doc. 3). This case was referred to United States Magistrate Judge Cathy Bissoon for pretrial proceedings, in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates.

On November 1, 2010, Defendants Beard, Eagle, Gifford, Keller, Nelson, Quattro, Smith, Treece, Tyler, Davis, Folino, Meighen, McAnany, Capozza, Dice, Pennsylvania Department Of Corrections, Price, Chapman, Varner, and Vihlidal (“DOC Defendants”) filed a motion to dismiss Plaintiff’s complaint, arguing that the grant of permission to proceed IFP was barred under 28 U.S.C. § 1915(g). (Doc. 42). On November 2, 2010, Defendant Hice filed a motion to dismiss (Doc. 45), and advanced arguments in support thereof that were substantially the same as

those raised by the DOC Defendants. See Def. Hice's Br. in Supp. of Mot. to Dismiss (Doc. 46).

Plaintiff responded to these motions on November 10, 2010.

On November 5, 2010, the magistrate judge issued a report and recommendation (Doc. 48), in which she recommended that Defendants' motions to dismiss be denied. Parties were given until November 19, 2010, to file objections. As of the date of this writing, no objections have been filed.

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation, the following ORDER is entered:

AND NOW, this 24th day of January, 2011,

IT IS HEREBY ORDERED that DOC Defendants' motion to dismiss (Doc. 42) is DENIED.

IT IS FURTHER ORDERED that Defendant Hice's motion to dismiss (Doc. 45) is DENIED.

IT IS FURTHER ORDERED that the magistrate judge's report and recommendation (Doc. 48) is adopted as the opinion of this Court with respect to this issue.

s/Terrence F. McVerry  
TERRENCE F. McVERRY  
UNITED STATES DISTRICT JUDGE

Cc:

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SCI Greene  
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